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ABSTRACT

Intended as a practical guide, the handbook presents information on implementation issues of P.L. 94-142, the Education for All Handicapped Children Act, and Section 504 of the Rehabilitation Act of 1973. The book is organized into two main sections: an overview of federal, state, and local responsibilities in special education, legislative background, and special education programs and placements: and questions and answers on general and specific issues, including the relationship between P.L. 94-142 and Section 504, funding, child count, individualized education programs, least restrictive environment, due process, and related services. (CL)

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Answering Your Questions About P.L. 94-142 and Section 504

A RESOURCE HANDBOOK

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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Preface

Since the passage in 1975 of the Education for All Handicapped Children Act (P.L. 94-142) and issuance of regulations in 1977 for Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), numerous questions have emerged about implementation of these two pieces of legislation. Both have critical implications for public education. It is the purpose of this handbook to provide a practical guide to the legislation by organizing questions of common concern into content areas and providing answers that will be meaningful and clear to state and local agency personnel, members of state and local boards of education, parents, and all others who need to keep abreast of the legal requirements and their impact on public education.

This handbook is organized into two main sections:

I. An overview of special education, with descriptions of federal, state, and local responsibilities, the background of legislation affecting education for handicapped children, and special education programs and placements.

II. Questions and Answers, categorized into the following areas, (and listed in the Table of Contents for quick reference):

- General questions about P.L. 94-142
- General questions about Section 504
- Questions about the relationship between P.L. 94-142 and Section 504
- Funding
- Child Count
- Individualized Educational Program (IEP)
- Least Restrictive Environment (LRE)
- Due Process
- Related Services

Acknowledgements

We believe that this handbook represents a comprehensive and practical treatment of both P.L. 94-142 and Section 504. It is the result of the work of literally scores of individuals who have worked over the past three years to gather and provide answers to frequently asked and

significant questions regarding P.L. 94-142 and Section 504.

We cannot acknowledge each of the contributing persons here . . . the list would be overly extensive. However, we would be especially remiss if we did not recognize and extend our appreciation to four persons who contributed substantially to this document: Barbara Aiello, Los Angeles, California; Judy Wallace and Linda Gibbs, Washington, D.C.; and Mabrey Whetstone, Auburn University doctoral student who served as a NASDSE administrative intern in the Spring of 1979.

We also must acknowledge our appreciation to several persons who provided extensive help in developing appropriate answers to many of the questions addressed herein: Bob Alexander, Washington, D.C.; Gary Snodgrass and Mike Norman, NASDSE; Larry Swift, Olympia, Washington; Ray Latta, San Diego State University; Bill Wilson, formerly of NASDSE and now a State Plan Officer with the Bureau of Education for the Handicapped.

We also acknowledge the 40 Missouri LEA school board members who provided encouragement for the publication of this manual, and positive critique of it during a workshop in April when it was field tested.

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I. Overview

Earlier Legislation

In 1963, P.L. 88-164 was enacted to address the need for teachers in the areas of hard of hearing, speech impaired, visually impaired, emotionally disturbed, crippled, and other health impaired children. This law created a Division of Handicapped Children and Youth in the Department of Health, Education and Welfare.

P.L. 89-313, passed in 1965, amended Title I of the Elementary and Secondary Education Act (ESEA) and established grants to state agencies to educate handicapped children in state-operated or supported schools. This legislation created the Bureau of Education for the Handicapped (BEH) to administer all Office of Education programs designed for the handicapped. BEH has four divisions. These are:

1. *Division of Assistance to States* is responsible for helping states and local districts implement P.L. 94-142 programs through financial support, monitoring programs, providing technical assistance and interpreting federal guidelines.

2. *Division of Innovation and Development* supports demonstration programs and field-initiated studies and conducts research and evaluation studies on federally funded programs.

3. *Division of Personnel Preparation* provides financial support for the training of special educators, regular classroom teachers, parents and other support personnel.

4. *Division of Media Services* supports research, training, production, and distribution of educational media for the handicapped.

Today, BEH administers almost one billion dollars in federal funds in 16 major programs for handicapped children and youth, including the administration of P.L. 94-142.

P.L. 94-142

The Education for All Handicapped Children Act — P.L. 94-142 was passed by Congress in November, 1975, and went into effect in October, 1977. The Act defines special education in the following manner:

> . . .specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

Under P.L. 94-142, children ranging in age from 3 to 21 years determined to be in need of special education are entitled to special education services. Some state laws do not, however, include the 3-5 and/or 18-21 age ranges. Therefore, these states are excluded from mandatory coverage of these age ranges.

Major provisions included in the law are:

1) Least Restrictive Environment
2) Free Appropriate Public Education
3) Individualized Educational Program
4) Due Process Procedures

The P.L. 94-142 definition of handicapped children includes mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, and specific learning disabled. Unlike other federal education laws, P.L. 94-142 has no expiration date.

Rehabilitation Act of 1973 — P.L. 93-112

P.L. 93-112, Title V of the Rehabilitation Act of 1973, states that handicapped people must not be discriminated against in any aspect of our national life that is supported in full or in part by U.S. tax dollars. HEW's Office for Civil Rights has monitoring and enforcement responsibilities for those programs receiving HEW financial assistance.

Title V has four sections which include the following:

1. *Section 501* requires affirmative action programs of all federal agencies. to hire and promote qualified handicapped persons;

2. *Section 502* requires access-free buildings for handicapped persons;

3. *Section 503* requires all federal contractees to enforce affirmative action programs to hire and promote qualified handicapped persons;

4. *Section 504* prohibits discrimination against qualified disabled persons in all institutions receiving federal financial assistance.

Section 504, as a law, applies to all recipients of federal financial assistance. In turn, each federal agency that provides such assistance is to promulgate, monitor, and enforce a set of 504 regulations that are specific only to recipients of its funds.

DHEW's regulations went into effect in June, 1977. Other federal agencies have now developed or are in the process of developing regulations that are patterned after those promulgated by DHEW. Education agencies need only comply with the regulations of agencies from which they receive federal financial assistance, for example, DHEW and the Department of Agriculture (school lunch programs).

Section 504's definition of "handicapped" is more general than the P.L. 94-142 definition and adds impairments such as alcoholism and drug addiction. Section 504 also has no expiration date — it is viewed as civil rights legislation, similar to Titles VI and IX.

Oversight responsibility for compliance with Section 504 is vested with the DHEW Office for Civil Rights. (See Figure 2, Appendix). Monitoring compliance, investigating complaints, and enforcement are the responsibilities of the HEW Regional offices. Section 504 does not specify a defined role for the state agency as does P.L. 94-142. However, federal regulations such as Title I, Title IV, P.L. 94-482 (Vocational Education), all require the SEA to receive assurances from LEAs that they are in compliance with all federal regulations prior to providing flow-through funds. Therefore, indirectly the SEA has some oversight responsibilities regarding Section 504 compliance.

Responsibilities of SEAs

Each State Department of Education has primary responsibility for insuring that educational services are provided to all handicapped children from the age of 3 to 21 (provided the state law covers the age ranges 3-5 and 18-21. Within the Department of Education, the Division of Special Education has the leadership role in expanding and developing educational programs for handicapped children in the state. It provides guidance in the implementation of state board of education regulations and policies governing the education of handicapped children and provides direction and assistance for special education in the state.

It is the responsibility of the Division of Special Education to:

- Serve as the advocate for special education in the Department of Education and state government.
- Perform statewide planning for educational programs and services for handicapped children.
- Update the Annual Program Plan for Special Education.
- Develop the necessary procedures, guidelines, forms, and instruments to implement State Board of Education policies, and state and federal laws governing the education of handicapped children.
- Monitor special education programs to assure compliance with state regulations.
- Receive, disburse, and administer state and federal funds designated for education of handicapped children.
- Establish guidelines to protect student and parents rights, particularly in the areas of due process and confidentiality of information.
- Inform LEAs, parents, and other agencies of the content and implications of state and federal laws pertaining to the education of handicapped children.
- Provide assistance to LEAs in implementing and operating educational programs for handicapped children.
- Work closely with and provide staff support to the State Advisory Panel for Special Education.
- Serve as liaison with other state agencies, parent and professional organizations, and other private agencies serving handicapped children.

Responsibilities of LEAs

The local education agency has the primary responsibility for providing appropriate educational programs for all handicapped children between the ages of 3 and 21 who are legal residents of the local district, provided the state law covers the age ranges 3-5 and 18-21. The basic responsibility of the LEA is to ensure that all handicapped children receive a free and appropriate public education.

This responsibility is not lessened if the child is being served by another public agency, institution, or private organization. The LEA has the final responsibility to insure that the needed services are provided, either by providing the service directly or by obtaining/coordinating the service from another source. The organizational arrangements under which handicapped children are served, the agencies providing services, and the types of services provided are determined locally to meet individual situations. These determinations are to be within state and federal guidelines.

To ensure the education of all handicapped children, the LEAs have the responsibility to:

- Seek out and locate all children within the jurisdiction with possible handicapping conditions, including those served by other public and private agencies;
- Provide for the comprehensive evaluation of educational needs, the development of individualized educational programs and the provision of appropriate educational services for every handicapped child in the LEA;
- Operate educational programs to serve handicapped children in accordance with policies, procedures, and guidelines established by the State Department of Education;
- Develop the special education application and budget and submit, after approval by the local school board, to the State Department of Education;
- Provide for due process for handicapped children and their parents in accordance with procedures established by the State Department of Education;
- Maintain information records of all handicapped students in such a manner as to protect confidentiality of information and to allow parental access to information;
- Provide such reports concerning the education of

handicapped children as required by the State Department of Education.

Section 504 compliance is the complete responsibility of the LEA as a recipient of federal financial assistance. The LEA is required to file an assurance form directly with the Office of Civil Rights of HEW (OCR) in Washington, D.C. In addition, all other compliance requirements are the ultimate responsibility of the LEA.

Special Education Programs and Placement

Under P.L. 94-142, each special education student is to be placed in the "least restrictive environment" (LRE), which means a program that, to the maximum extent appropriate, allows the student to be educated with students who are not in need of special education. The specific provision of P.L. 94-142 which addresses least restrictive environment states:

> ". . .to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . ." (Section 612).

The decision regarding placement of a handicapped student must be based on consideration of each child's specific educational strengths and weaknesses, which are formulated through an extensive evaluation process. In determining the extent to which a handicapped student can be educated with students who are not handicapped, the overriding consideration is that placement decisions must be made on an individual basis.

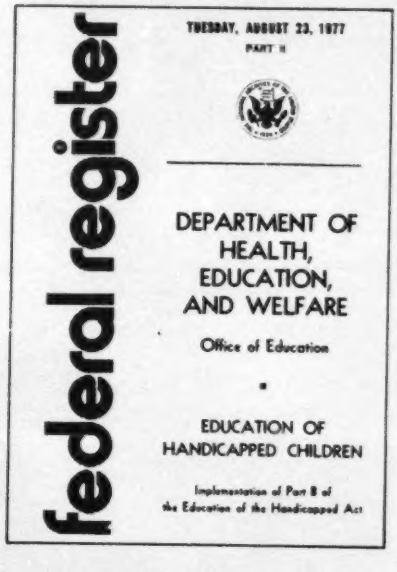
A continuum of educational services should be available to facilitate placement in the least restrictive environment. The continuum includes the following alternative placements: instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. In addition, supplementary services (such as resource room or itinerant instruction) must be provided in conjunction with regular class placement.

(Note that the term "mainstreaming" does not appear in P.L. 94-142, although it is often equated with LRE and the continuum of educational services that do appear in the law.)

Large school districts are often able to provide a complete continuum of most of these programs and services. However, smaller districts may need to develop cooperative agreements with neighboring districts to provide the specialized program which more severely handicapped students often need. Interagency agreements between the public schools and other agencies can provide a number of additional service and program options.

Private schools provide additional educational alternatives for handicapped students whose needs are so unique that public schools and agency programs cannot provide appropriate services. These private school services must be provided at public expense if they are used as a placement alternative of the local education agency.

Section 504 has similar and parallel concepts to P.L. 94-142, although the actual wording is different. The intent of both laws is to provide a free and appropriate public education. For example, while P.L. 94-142 uses the concept of "least restrictive environment," Section 504 requires the education of handicapped students to occur "with persons who are not handicapped to the *maximum extent appropriate.*" Also P.L. 94-142 specifies an IEP while Section 504 requires a program that is "designed to meet individual educational needs." In general, P.L. 94-142 specifies *what* education for handicapped children shall include and *how* it shall be provided; Section 504 specifies *what* equal educational opportunity means for handicapped students.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TUESDAY, AUGUST 23, 1977
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

EDUCATION OF HANDICAPPED CHILDREN

Implementation of Part B of the Education of the Handicapped Act

II. Questions and Answers

General Questions About P.L. 94-142

What constitutes "full service?"

A Local Education Agency (LEA) or State Education Agency (SEA) may be said to be at full service when it has been determined that the education agency is providing a free appropriate education to all handicapped children residing in the area served by the education agency. This determination must be based on clear and convincing evidence provided by the LEA and SEA in question. Such a determination must be made by the state in regard to an LEA. In the case of a state, the determination regarding full service is made by the Commissioner of the U.S. Office of Education.

What does "free appropriate public education" mean?

Free appropriate public education means special education and related services which:

1. Are provided at public expense, under public supervision and direction, and without charge to the parent/guardian;
2. Meet the standards of the SEA;
3. Include preschool, elementary school, or secondary school education in the state involved; and
4. Are provided in conformity with an individualized educational program that meets the requirements outlined.

What are the terms used to define handicapping conditions under P.L. 94-142?

There are 10 categories of handicapping conditions under P.L. 94-142. They are:

Deaf means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

Hard of Hearing means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the above definition of deaf.

Mentally Retarded means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

Multihandicapped means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

Orthopedically Impaired means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

Other Health Impaired means limited strength, vitality, or alertness, due to chronic or acute health problems such as a health condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

Seriously Emotionally Disturbed is defined as follows:

The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

- An inability to learn which cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fear associated with personal or school problems.

The term includes children who are schizophrenic or autistic The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in

understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor handicaps or mental retardation, or of environmental, cultural, or economic disadvantage.

Speech Impaired means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

Visually Handicapped means a visual impairment which, even with corrections, adversely affects a child's educational performance. The term includes both partially sighted and blind children.

Must SEAs monitor LEAs under P.L. 94-142?

Regulations for P.L. 94-142 state that each annual program plan shall include specific monitoring procedures to be followed by the SEA to assure that the LEAs effectively implement the individual protections, etc., of the statute and use P.L. 94-142 funds efficiently.

What are the penalties for noncompliance with P.L. 94-142 for LEAs or SEAs?

The SEA is obligated to review applications from LEAs and monitor their implementation. If the LEA or a private school obtaining monies for programs for the handicapped fails to comply with the requirements of a state plan, the SEA must withhold payments to the public or private agency. If the state fails to do so, the U.S. Commissioner of Education may initiate proceedings to withhold monies from the entire state.

What does P.L. 94-142 say about the length of the school day or school year for a handicapped child?

The Act requires that each handicapped child must have available a free, appropriate public education which meets state standards, but neither the law nor its regulations specify the length of a school day or the number of months of school for handicapped children. However, the law does require that parents must be given the opportunity to participate in the development of the IEP (See Questions About the IEP), and if parents disagree about any part of the program the school district proposes, they have a right to a hearing.

How does an SEA insure that private schools meet P.L. 94-142 standards?

Regulations state that the SEA shall determine whether the private schools meet standards that apply to public education agencies by:

- Monitoring compliance;
- Disseminating copies of state standards to all applicable private schools;
- Providing an opportunity for the private schools to participate in the development and revision of state standards;
- Making provision for probationary status for such schools comparable to that afforded to public education agencies.

General Questions About Section 504

How does Section 504 define handicapping conditions?

A handicapped person (or student) is any person who 1) has a physical or mental impairment which substantially limits one or more major life activities, 2) has a record of such an impairment, or 3) is regarded as having such an impairment.

What are the implications of Section 504?

In effect, handicapped people must not be discriminated against in any aspect of our national life that is supported in full or in part by federal financial assistance. For example, the regulations require that handicapped persons must be considered for hiring and promotion on the basis of ability, training and/or experience, and not on the basis of a handicapping condition.

Because of Section 504 (and P.L. 94-142) a greater increase in the incidence of integrating handicapped children into regular classroom programs will become evident. However, this integration is to be accomplished only when the individual handicapped child can benefit from the particular placement.

The very nature of most handicapping conditions will require services not only of an educational nature, but also of a noneducational nature — for example, parent education programs, coordination/cooperation of efforts between public and private agencies, diagnostic assessment facilities and procedures. Therefore, all educational and noneducational services required to meet individualized education needs must be implemented if a comprehensive program for handicapped children is to be provided.

If an LEA is meeting the requirements of P.L. 94-142, is it automatically in compliance with Section 504 regulations?

Not necessarily. The district is probably in compliance with Section 504 requirements where students receiving special education are concerned. However, LEAs usually have students who are protected by Section 504 but who are not receiving special education. Therefore, LEAs must take

steps to assure that they are providing a free appropriate public education for these students as well. While Section 504 requirements are not as clearly delineated as P.L. 94-142 requirements, there are procedures that LEAs must follow and document in order to assure compliance.

Must SEAs monitor LEAs under Section 504?

No, Section 504 does not require monitoring by the SEA. The HEW regulations specify that the Office for Civil Rights has oversight responsibility. On the other hand, Section 504 prohibits any agency from entering a contractual relationship without receiving assurances that the contractor does not discriminate on the basis of handicap. Therefore, since most HEW funds flow through the SEA to the LEA, the SEA should require LEAs to provide non-discriminatory assurances from contractors prior to passing on the funds. However, specific monitoring requirements are not delineated in the 504 regulations.

What happens if state or local law conflicts with Section 504?

The federal law overrules any state or local laws, regulations, or policies. For example, if an LEA in its attempts to comply with state law is in violation of Section 504, it should give priority to the federal obligation.

What are the penalties for noncompliance with Section 504 for LEAs or SEAs?

The HEW Office for Civil Rights (OCR) may have all HEW financial assistance terminated in the case of Section 504 violations. However, OCR prefers compliance to termination of assistance and therefore has worked with recipients in achieving compliance before terminating funds.

Questions About the Relationship Between P.L. 94-142 and Section 504

How are P.L. 94-142 and Section 504 alike?

P.L. 94-142 and Section 504 are alike since they both address education for handicapped students. Subpart D of Section 504 specifically details the rights and responsibilities of both elementary and secondary education program providers and the students in those programs. The five common elements of the two laws are:

1. A free appropriate public education must be provided;
2. Handicapped students must be educated with nonhandicapped students to the maximum extent appropriate;
3. Procedures must be developed for identification and location of all handicapped students in the jurisdiction;
4. Evaluation and classification procedures must be implemented;
5. Procedural safeguards must be established.

How are P.L. 94-142 and Section 504 different?

1. P.L. 94-142 regulates a voluntary educational program for which federal funds are provided. Section 504 is a mandatory civil rights statute with which all recipients of federal financial assistance must comply. Further, the federal government does not provide funds to cover costs related to compliance with Section 504.
2. P.L. 94-142 is an education law that is monitored by the Bureau of Education for the Handicapped of the U.S. Office of Education. Section 504 is a civil rights law that is monitored and enforced by the HEW Office for Civil Rights.
3. Section 504 covers programs other than elementary and secondary education. It also includes post-secondary education, health, welfare, and social service programs.
4. In addition to protecting the civil rights of handicapped students and parents of students who benefit from these programs, Section 504 also protects the rights of handicapped persons as employees of agencies that receive federal financial assistance.
5. The definitions of "handicap" are different (as specified in the General Questions about each); the implications of these differences are discussed throughout this handbook.

Given the differences in the definition of "handicapping conditions" under P.L. 94-142 and Section 504, does this mean that the populations of students covered by the two laws are different?

Yes. A student with an impairment affecting a major life function does not necessarily receive special education services under P.L. 94-142 even though that person is a "qualified handicapped person" as defined by Section 504. For example, a student with diabetes, epilepsy, or an addiction to alcohol or drugs is protected by Section 504 but would not necessarily need special education services as a result of one of these conditions. Because of the different definitions, the population of students protected by Section 504 is larger than the population covered by P.L. 94-142.

May an SEA or LEA refuse to participate in P.L. 94-142?

An SEA may elect not to participate in P.L. 94-142 but would still be required by Section 504 to provide a free appropriate education for qualified handicapped children in those programs it operates. If an LEA elected not to participate in P.L. 94-142, it would still have the responsibility of assuring the provision of a free appropriate public education under the State's Annual Program Plan and State regulations, and Section 504 regulations, as well as of complying with other parts of the regulations.

Questions About Funding Issues

What are the authorizations and appropriations for P.L. 94-142?

They are based on a Funding Formula, calling for the number of handicapped children served, aged 3-21, times the percentage stated below of the National Average Per Pupil Expenditure (NAPPE):

School Year	*Percentage of NAPPE*	*Authorization*	*Appropriation*	*Per Pupil Amount*
77/78	5%	$387 million	$315 million	$ 70
78/79	10%	775 million	465 million	156
79/80	20%	1.2 billion	804 million	211
80/81	30%	2.32 billion	862 million	—
81/82	40%	3.16 billion	—	—

Are there priorities in the use of P.L. 94-142 funds?

Yes. The first priority for use of these funds is for out-of-school children who are not receiving any education. The second priority is for children with the most severe handicaps within each handicap category who are being served inadequately.

What is the obligation of a public agency receiving P.L. 89-313 (State-operated or supported schools) funds to implement P.L. 94-142?

The SEA must assure that the requirements of P.L. 94-142 are met and that all handicapped children within the mandated age ranges and timelines (including P.L. 89-313 children) receive all of the protections of P.L. 94-142. This assurance extends to public agencies providing education to handicapped children, including those recipients of P.L. 89-313 funds as other state agencies.

May P.L. 94-142 funds be used to support educational programs for children in state-operated programs?

No. State-operated programs are funded by monies from P.L. 89-313.

May funds under P.L. 94-142 and P.L. 89-313 be used to serve handicapped children below the age of 3?

Under P.L. 94-142, it is permissible to serve handicapped children aged 0-2 if an SEA or LEA is providing (makes available) a free appropriate public education to all of its first priority children. While these children can be served under P.L. 94-142, they may not be counted for funding purposes. The count applies only to handicapped children age 3-21. It also is permissible to use P.L. 89-313 funds to serve the 0-2 population if: (1) the education of the children is the direct responsibility of a state agency rather than an LEA; (2) they are counted for allocation purposes under P.L. 89-313; (3) they are provided with an educational program commensurate with their special needs; and (4) the funds are used in providing that program.

What is the intent of the "comparability" requirement of P.L. 94-142?

The intent of the comparability provision is to insure that handicapped children who receive services under P.L. 94-142 are treated equally with handicapped children who do not receive services with P.L. 94-142 funds. The LEA must use state and local funds to provide the same level of services—taken as a whole—to all handicapped children in the LEA who need the services before P.L. 94-142 funds may be used. P.L. 94-142 funds may not be used to provide a service to some children in an LEA if state and local funds are used to provide the same service to other handicapped children in the LEA. The LEA must provide the service with state and local funds to all handicapped children residing in the jurisdiction who need the service. For example, if in two of three schools, occupational therapy is provided with state and local funds, P.L. 94-142 funds cannot be used to provide the same occupational therapy in the third school.

How do funds flow to SEAs and LEAs?

SEAs will receive funds from BEH based on an approved annual program plan. Funds will not flow to LEAs until the SEA receives dollars based on approval of its plan, and the SEA has in turn approved the LEA application for P.L. 94-142.

What constitutes "satisfactory assurance" for an LEA to receive funds in accordance with the provisions of the law?

The LEA application for funds to the SEA must meet the guidelines established by the SEA, including an assurance that control of funds is in a public agency, and that funds allocated under P.L. 94-142 are used only for the excess costs of providing special education and related services for handicapped children.

Is every LEA eligible for direct P.L. 94-142 funding?

No. The law specifies a minimum amount ($7,500) which must be generated in the LEA before that agency is eligible for any P.L. 94-142 funds. This stipulation was meant to insure that the services offered were of sufficient size and scope to provide quality education programs and to encourage smaller districts to develop cooperative arrangements with other districts.

Does the LEA receive the money directly from the federal government?

No. The funds must flow through the state department of education, which then has the responsibility to monitor and insure the provision of free appropriate public education. At least 75% of the state's appropriation of the funds must flow to LEAs proportionately, based on each LEA's child count.

How may LEAs spend funds generated by P.L. 94-142?

The federal dollars must be applied to the excess costs of educating handicapped children.

What does "excess costs" mean?

Excess costs are those costs in excess of the annual per pupil expenditures in an LEA during the preceding school year, after deducting funds received from specific federal programs and any state and local funds which were expended for programs that would qualify under P.L. 94-142. The LEA must maintain the previous year's financial commitment to the handicapped. Funds needed in excess of that would be "excess costs."

Can P.L. 94-142 funds be used to maintain programs for handicapped children now being operated in the LEA?

Not initially. P.L. 94-142 funds may not supplant state and local funds in educating the handicapped, but must be applied to the excess costs of additional programs, as noted above. There is a provision in the law which would allow a state to apply for and receive a waiver to supplant when proof is available that all handicapped children in the state are receiving a free appropriate public education.

Who pays if appropriate services for a handicapped child are not available in the LEA and the child must be sent to a private facility either out of the district or out of the state?

The cost of the child's education, including room and board and any other costs related to his educational placement must be provided at no cost to the parents. Therefore, individual agencies (LEA/SEA/Human Resources) or a combination of agencies or resources must pay for such expenses. The local school would not be required to pay for the cost of medical treatment except for medical services related to the diagnostic process.

Who is fiscally responsible for education when a child is placed for educational purposes in a private school or institution by his/her parents?

If a parent places a child in such a program when "free appropriate public education" is available, then neither the SEA nor the LEA has an obligation to pay for the child's education at the private school or facility. However, the state must make special education and related services available to that child if requested. If a situation regarding cost, identification, evaluation, or program cannot be resolved between the parties, then an impartial hearing is the logical recourse.

Must all the costs of educating handicapped students be assumed by local, state, and federal funds?

No. Numerous non-education and other public and private agencies at all levels of government provide a variety of services to handicapped children and their parents. The LEA must assume the responsibility of interagency coordination to provide the necessary special education and related services. The SEA/LEA have ultimate responsibility for service delivery.

Can parents of a handicapped child be required to share the cost of the child's education?

No. All special education and related services must be provided at no cost to the parents of the handicapped child. Section 504 allows parents of a handicapped child to be charged for expenses to the extent that they are charged to parents of nonhandicapped children, such as locker fees, for example. The intent of Section 504 is that extra costs of providing and education for handicapped students should not be borne by the student, parent, or guardian. An exception exists for private institutions where parents chose to have their child in that program. (If an LEA referred the student to the private institution, the exception does not apply).

Can parents demand that the LEA pay for any and all special services?

Services to be paid for by public funds are those specified in the child's IEP. Since parents have the right to participate as members of this team, they may, with team concurrence, stipulate needed services. Payment for services beyond those specified by the IEP is at the discretion of the LEA.

May an LEA use its P.L. 94-142 funds for special education administrative costs?

Yes, provided that P.L. 94-142 funds are not used to supplant funds currently expended for administrative costs.

What is the financial obligation of the school district when various evaluation personnel and other school staff make recommendations for services to individual handicapped children (for example, if an audiologist recommends a hearing aid, a resource teacher recommends a service that is not available in the district, etc)?

If it is determined through the evaluation process that a given handicapped child needs to be evaluated in a particular area (e.g., to receive a neurological examination), that evaluation must be carried out at no cost to the parent. If a handicapped child is already in a special education program and a recommendation is made for further evaluation(s), this would be similar to the reevaluation requirement in P.L. 94-142.

Once the evaluation is completed, an IEP meeting is conducted to develop a written statement for each handicapped child, including a statement of the specific special education and related services to be provided to the child. The special education and related services listed in the child's IEP must be provided at no cost to the parents. The financial responsibility of various agencies for providing these services is determined by state statute or regulation.

Can P.L. 94-142 funds be used for released time for teachers to participate in IEP meetings, inservice training, or for the purchase of learning materials?

Yes. P.L. 94-142 funds may be used for any service or activity that is directly involved in the education of handicapped children (including the above items) provided the priorities and other requirements of the Act have been met.

What other types of funds are available through P.L. 94-142?

There is a special incentive grant program for states which provide services to pre-school children aged 3 to 5. In addition to the funds received in the regular formula count, "incentive grant" funds are available for each preschool child receiving a free appropriate public education. These funds do not have to be spent on the children who generate the funds, and the LEA may apply to the SEA to receive P.L. 94-142 funds to provide pre-school services. Other monies are available through federal or state grants for programs for deaf-blind children and for preservice and inservice training for special teachers, regular teachers, and support personnel.

Are there other funding sources for services to handicapped students?

Yes. A funding source often overlooked is the Vocational Education Amendments of 1968 (P.L. 90-576) which mandated a 10% set-aside for vocational training of handicapped pupils. The Head Start project also has a 10% set-aside for inclusion of handicapped students. A program for developmental disabilities for deaf-blind students also provides funds. Title IV-C, ESEA (P.L. 93-380) which funds innovations in education provides a set-aside of at least 15% to special education.

Interagency coordination is critical for providing efficient delivery of services for handicapped students. Since many handicapped students require multiple services, SEAs and LEAs will need to collaborate with other human service agencies. The sharing of financial resources is an important approach to developing positive interagency relationships. More importantly, it has been shown to be a cost-effective and efficient approach to serving the needs of many handicapped students.

Questions About Child Count

Can children who are receiving more than one special education service be counted more than once?

No. The education agency may not report a multi-handicapped child under more than one handicapped condition. The reported count must be unduplicated.

How many hours a day must a student spend in "special education" to be counted?

The amount of time a child spends in "special education" depends on the IEP written for the child. Once a child has been identified as requiring special education and related services, the planning committee then determines the amount of time spent in each program area and the services to be received. There is no fixed amount of time that the child must receive special education services to be eligible for P.L. 94-142 funds.

What is the definition of "unserved?"

Unserved means specifically those handicapped children who are not enrolled in school. Handicapped children enrolled in schools but not receiving services are considered "underserved."

Can an SEA count a child under both P.L. 94-142 and P.L. 89-313 (state-operated programs) for purposes of determining the state's allotment?

No. A state cannot count a child under both programs for purposes of determining allotments for P.L. 89-313 and P.L. 94-142 funds.

Is the "mainstreamed" special child who spends all of his/her time in a regular classroom considered "served" or "unserved?"

In order to be counted, a child must first be receiving the services called for in the IEP. If the IEP called for full-time placement in a regular program, the child is considered "served." However, unless the child receives some special education, the child may not be counted for purposes of receiving dollars under P.L. 94-142. It should be kept in mind that even though children are not receiving special education, if their condition affects a major life function they are protected by Section 504. Therefore, the LEA should have on file documentation indicating that the student is receiving a program appropriate to his/her "individualized educational needs."

How will children with a medically significant but transient condition such as a fluctuating hearing loss, be accounted for?

If a child requires special services, such as homebound or hospital instruction and has an IEP developed, he/she may be counted. Furthermore, Section 504 protects students with temporary handicapping conditions, such as a broken leg, and requires development of an individualized program (not necessarily an IEP) for those students. The intent is to assure that temporarily handicapped students continue to receive a free appropriate education during the time they have an impairment.

May handicapped children in private schools be counted?

Yes, if they are receiving special education and related services and an appropriate IEP has been developed for them.

Must an LEA screen/identify/ locate those handicapped children educated in private schools?

Yes. The LEA is responsible for conducting a child find program. The primary purpose of such a program is to identify handicapped children who are unserved. All children residing within the LEA district are eligible for a free appropriate public education; parents, of course, have the right to place their child in a private school at parent expense unless such placement is authorized by the planning committee, in which case the placement would be at public expense.

Questions About Individualized Education Program (IEP)

What must be included in the Individualized Educational Program (IEP)?

The IEP must contain:

1. A statement of the child's present levels of educational performance;
2. A statement of annual goals, including short-term instructional objectives;
3. A statement of specific special education and related services to be provided to the child and the extent to which the child will be able to participate in regular educational programs;
4. The projected dates for the initiation of services and the anticipated duration of the services; and
5. Appropriate objective criteria and evaluation procedures, and a schedule for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

Who determines the content of the IEP?

Participants at the individualized planning conference must include, at a minimum, a representative of the public agency, (other than the child's teacher), the child's teacher, the child's parent, (or guardian or surrogate), the child where appropriate, and other individuals at the discretion of the parent or agency. For a handicapped child who has been evaluated for the first time, either a member of the evaluation team must participate in the meeting, or some person present at the meeting must be knowledgeable about the evaluation procedures used with the child and be familiar with the results of the evaluation. It is the responsibility of this committee to develop, evaluate, and as necessary revise the IEP.

When must an IEP be developed for each handicapped child?

An IEP must be developed or revised by the beginning of each school year and must be reviewed and, if appropriate, revised periodically but not less than annually. For a newly-identified handicapped child who was not receiving special education, an IEP must be developed within 30 days of a determination that the child needs special education and related services.

While Section 504 does not require an IEP, per se, it does require the provision of educational programs that "are designed to meet individual educational needs of handicapped persons." Section 504 regulations state that utilization of an IEP developed in accordance with P.L. 94-142 is one means of meeting the requirement. However, it is necessary to remember that students "qualified" under the definition of Section 504 are not necessarily receiving special education programs or services and if any such students exist in an LEA's jurisdiction, the LEA would be obligated to meet those students' needs as adequately as the needs of nonhandicapped persons are met.

What constitutes parent involvement in planning/writing the IEP?

Each LEA shall take steps to assure that one or both of the parents of the handicapped child are present during the development of the IEP or are afforded the opportunity to participate, including scheduling the meeting at a mutually convenient time and place. In cases where it is not possible or practical for the parent to attend, other alternatives to assure participation must be attempted.

The meeting to develop an IEP may be conducted without the parent being in attendance only if (1) the parent furnishes a written waiver of his or her right to participate, in accordance with due process procedures, or (2) there is sufficient documentation of attempts to arrange a mutually agreed upon time and place.

Section 504 placement procedures do not require parental involvement, but the procedural safeguards require an opportunity to appeal a placement decision. These requirements have important implications for LEA practices. The Section 504 qualified students who do not receive special education may be placed by LEA personnel, using a variety of appropriate information, without parental involvement. However, following the placement, the parents must be notified so that they may appeal the decision if they wish.

What constitutes a change in an IEP?

Changes either in major content of an IEP or in placement constitute a change in an IEP, and parents must be notified of such proposed changes.

Is the IEP a "contract?"

Although the IEP is not intended as a binding contract, the services listed in the IEP must be delivered by the LEA. However, P.L. 94-142 does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives. Further, P.L. 94-142 does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being met. (See Questions About Due Process).

Questions About Least Restrictive Environment (LRE)

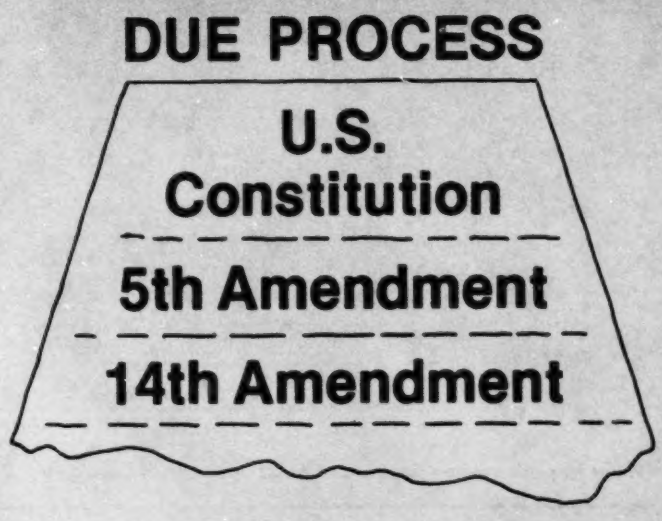
Do the placement requirements from P.L. 94-142 mean that the LEA must provide the appropriate educational program in the school closest to the child's home regardless of handicapping condition?

Placement in the school closest to the child's home is one of several factors to be considered when making a placement decision. Other factors for consideration are that each child's placement must be determined individually and annually, and must be based on the child's IEP. Moreover in making a placement decision, consideration must be given to any potential harmful effect on the child or the quality of services which the child needs.

Generally, placement decisions cannot be made on a class or categorical basis (e.g., all blind children must automatically go to the school for the blind.) Rather, decisions must be based on each child's individual special education and related service needs. Thus, a blind child might be able to be educated in the local school district with supplemental assistance from a resource teacher of the blind, while another blind child may need to be sent to a residential school for intensive services. The main point is that placement decisions must be made on a case-by-case basis.

How can preschool services be provided in the least restrictive environments?

As with all special education services, preschool services must be provided in accordance with each child's IEP. For some children, special education and related services may be provided in their home by itinerant teachers. Other children will require the intensive help available only in special preschool centers. A continuum of services must be made available for preschool handicapped children in much the same way as for school age children. Regular classroom services are not normally available at the preschool level. Integration into regular programs is often made possible by providing special education and related services to handicapped preschool children enrolled in private or public day care programs. Interagency cooperation may provide vital services for preschool children without the confusion of unnecessary and costly overlap and duplication of services among agencies.



Questions About Due Process

What happens if a parent, guardian, or surrogate parent disagrees with the placement of a handicapped child?

The SEA and LEA must inform parents, guardians and surrogate parents (henceforth referred to as "parents") of the opportunity to present complaints with respect to any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education of the child. The SEA or LEA must further provide a formal procedure for the parents to follow in presenting a complaint. This procedure includes the opportunity to take the complaint to an impartial due process hearing. The results of such a hearing may be appealed by either the parent or the education agency. The final step in this process could be a civil action.

Section 504 also requires the adoption of grievance procedures. Those procedures used for compliance with P.L. 94-142 can be adopted to achieve parental compliance with this requirement. (In addition, employee grievance procedures must also be established.)

How are SEAs and LEAs to inform parents of their rights under due process?

Each state must establish procedures to assure that handicapped children and their parents are guaranteed procedural safeguards. These must assure that:

a) Parents have the right to examine records;

b) Parents have the opportunity to obtain an independent evaluation;

c) Parents have the right to appeal to a due process hearing officer any decision made by a public education agency.

Written prior notice must be provided to the parents of a handicapped child whenever the SEA or LEA prepares to initiate a change in, or refuses to change, the identification, evaluation, or educational placement of a child. Such notice must be in the native language or mode of communication of the home.

Is it necessary to notify parents prior to a screening of their child?

If the screening is general, that is, if it is given to an entire population, i.e., all third graders, then notice is not necessary. If it is an individual or select group screening, the parents must be notified and must give their consent prior to the screening.

What are the provisions in the P.L. 94-142 and Section 504 regulations which insure protection in evaluation procedures?

Each state education agency shall assure that procedures for the evaluation and placement of handicapped children are selected and administered so as not to be racially or culturally discriminatory. These procedures must assure, at a minimum, that tests and evaluation materials:

- are provided and administered in the child's native language or mode of communication;
- have been properly and professionally validated for the specific purpose for which the recipient proposes to use them;
- are administered by personnel who meet appropriate certification requirements under the law, and are administered in conformance with the instruction provided by their producer;
- include those tailored to assess specific areas of educational need and not merely those which are designed to provide a general I.Q. score.

In addition, procedures must assure that:

- test selection and administration is such that, when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever factor the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills;
- no one test or type of test or other means of evaluation is used as the sole criterion for placement;
- information from other services, such as information concerning physical condition, sociocultural background, and adaptive behavior in home and school is gathered and considered, and the weight given to each of these factors is documented;
- the interpretation of the evaluation data and the subsequent determination of the child's educational

placement are made by a team of persons knowledgeable about the child;

- if the information derived either from ability and achievements tests or from other sources results in a determination that the child does not need instruction in a special setting, the child will not be placed outside the regular instructional setting. The child will be placed in the "least restrictive environment" of the regular classroom.

What happens when parents request but cannot afford to pay for an independent evaluation?

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA. However, the LEA may initiate a hearing to show that the evaluation conducted by local personnel is appropriate. If the LEA evaluation is found to be appropriate, the parent still has the right to an independent educational evaluation, but not at public expense, and the results of this independent evaluation must be considered by the LEA in the decision-making process concerning the child.

Is the record of access to confidential information requirement under P.L. 94-142 different from the requirement under the Family Educational Rights and Privacy Act (FERPA) of 1974?

No. Schools keeping a record of disclosures consistent with the requirements of FERPA would meet the requirements of P.L. 94-142.

Does the doctrine of "privileged communication" apply to testimony of educational personnel at a hearing regarding the proposed testing or placement of a child suspected of having a handicapping condition?

Most educational personnel are not affected by the doctrine of privilege. Some states have included licensed psychologists among those professionals affected by the doctrine. Not all school psychologists, even those possessing state educational psychologist certificates, are included within the meaning of "licensed psychologist." One would have to refer to the statutes of each state to discover whether the doctrine would apply in an individual situation.

In any case, it is important to recognize that under the doctrine of privileged communication, the right to control the testimony belongs to the client, not the professional. Thus, even if an educator were covered by the doctrine, the child's parents could waive the privilege and the educator could then be compelled to testify regarding communications between the child or parents and himself. Finally, it must be pointed out that few states have granted the authority to administrative hearing officers to compel testimony from reluctant witnesses. An order to divulge information may have to come from the educator's employer or a court.

What does P.L. 94-142 mean in its definition of "parent?"

P.L. 94-142 defines the term "parent" to mean "a parent, a guardian, a person acting as a parent of child, or a surrogate parent . . ." The definition of "parent" was written to make it clear that the "state" could not be regarded as the parent. If the child is a ward of the state, there is no "parent" to represent the child's interests, and a surrogate parent must be appointed according to the requirement of P.L. 94-142. The law states that SEAs and LEAs shall establish criteria to assure that a person selected as a surrogate (1) has no other vested interest that would conflict with his/her primary allegiances to the child represented, and (2) demonstrates competencies that assure adequate representation of the child.

May a school board official serve as an impartial hearing officer?

No. An interpretation by the U.S. Office of Education states that "school board officials are disqualified." This interpretation is based on the following statement in the Conference Report on P.L. 94-142:

> Whenever a complaint is received, the parents or guardians shall be afforded an opportunity for an impartial due process hearing, which hearing shall be conducted by the LEA or SEA . . . In addition, the conferees point out that hearings *are not conducted by the agency itself. The hearing will be conducted by an impartial hearing officer* since the state or local agency or intermediate unit will be a party to any complaint presented.

Questions About Related Services

What is the scope of "related services" under P.L. 94-142?

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education. They include speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. The list of related services is not exhaustive. Related services might include other developmental, corrective, or supportive services if they are required to assist a handicapped student to benefit from special education.

How does an IEP committee determine what related services must be provided?

Generally, the following three conditions must be met for specific related services to become a part of the IEP:

1. If the service is necessary for the child to benefit from special education, and
2. If the need for service is articulated descriptively in the assessment of the child, and
3. If the service is consistent with SEA standards — then the service is a related service, and it is the district's responsibility to see that it is provided at no cost to the parent in the least restrictive environment.

To what extent must medical services be provided by the LEAs?

The LEA is required to have medical services available to the extent that they are necessary for evaluation or diagnostic purposes. If as a result of the medical service (for evaluation or diagnostic purpose), it is determined that treatment is required, P.L. 94-142 does not require that the LEA pay for the treatment.

How does an LEA determine its financial responsibility for those related services which are provided by a licensed physician?

If a licensed physician provides evaluation or assessment services and if the evaluation is not paid for by another agency, then the LEA must pay. For other related services, if the LEA chooses to use a licensed physician to provide the service, consistent with state regulations, and if the service is not paid for by another agency, then the LEA must pay.

Appendix

Figure 1

P.L. 94-142 FUNCTIONS/RESPONSIBILITIES CHART

U.S. Office of Education-State Education Agencies-Local Education Agencies

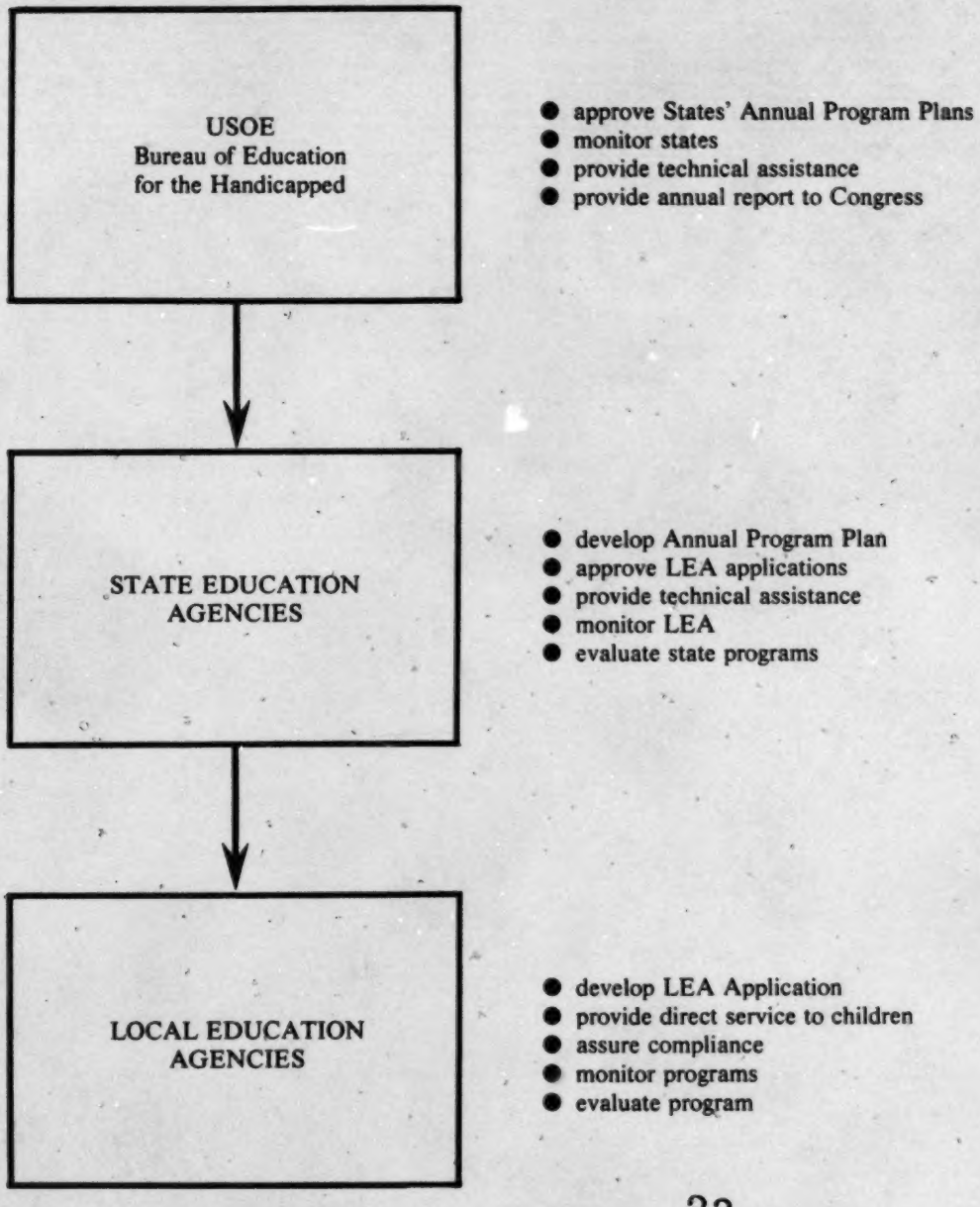


Figure 2

SECTION 504 FUNCTIONS/RESPONSIBILITIES CHART*

Federal DHEW OCR (Office for Civil Rights)	● develop regulations ● provide technical assistance ● provide policy interpretations ● enforce compliance
Regional DHEW OCR	● provide technical assistance ● investigate complaints ● review recipient compliance
Recipient** Agency	● provide compliance assurances ● conduct self-evaluation ● develop/implement transition plan ● maintain compliance documentation

** This chart reflects the functions and responsibilities for programs receiving federal financial assistance from the Department of Health, Education and Welfare. Other federal agencies, for example the Department of Agriculture and Department of Transportation, also have staffs with similar oversight responsibilities for programs to which they provide financial assistance.*

*** Note that OCR's oversight responsibility is directly over the LEA and not through the SEA as is BEH's relationship with LEAs.*